



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
P.O. BOX 1450  
ALEXANDRIA, VA 22313-1450  
www.uspto.gov

MAIL

MAY 10 2005

DIRECTOR OFFICE  
TECHNOLOGY CENTER 2600

DECISION ON PETITION  
TO WITHDRAW HOLDING OF  
ABANDONMENT

THOMAS R. FITZGERALD, ESQ.  
16 E. MAIN STREET, SUITE 210  
ROCHESTER NY 14614-1803

In re Application of :  
A. Tanju Erdem :  
Application No. 09/689,565 :  
Filed: October 12, 2000 :  
For: **METHOD FOR TRACKING MOTION** :  
**OF A FACE** :

This is a decision on the request to transfer papers and renewed request, filed October 22, 2004, which is treated as a Petition to Withdraw the Holding of Abandonment pursuant to 37 C.F.R. §1.181. No fee is required.

This application was held abandoned for failure to respond to the Office action mailed August 4, 2003. A Notice of Abandonment was mailed on July 1, 2004.

The initial petition decision mailed October 15, 2004 denied Petitioner's request to withdraw the holding of abandonment for the following reasons. The petition contained evidence of submissions, specifically an amendment (response) for another application (i.e., 09/689,566, hereinafter referred to as '566), and not a submissions for the subject application. There was no personal statement from the person signing the certificate of mailing stating that each document was actually mailed on the date specified, in accordance with 37 C.F.R. §1.8(b). The credit card used to pay for the extension of time, required such that any submission would have been considered as having been timely filed, appeared to have expired. Finally, the certificates of mailing addressed different serial numbered applications, particularly the one for the date-stamped post card receipt which was required to show timeliness of the overall submission, i.e., the date stamped post card arrived two days late, the certificate of mailing for a date stamp post card identifies a different application. Without a proper certificate of mailing for the date-stamp post card receipt for the subject application, then the date-stamp post card receipt revealed that the entire submission was filed two days late.

Petitioner, within their renewed request states that the submission was errantly submitted in the '566 application and requests that the papers and fees, be transferred to the subject application.

A review of the '566 application record reveals that an extension of time fee was applied to the '566 application following a request received January 7, 2004. Furthermore, the contents of a 21 page amendment, petition for extension of time, and certificate of mailing, all with a receipt date stamp of January 7, 2004, were all located within the file record of the '566 application.

MPEP §724.05 [R-2] Petition To Expunge Information or Copy of Papers in Application File, states in part:...

**III. INFORMATION SUBMITTED IN INCORRECT APPLICATION**

37 CFR 1.59(b) also covers the situation where an unintended heading has been placed on papers so that they are present in an incorrect application file. In such a situation, a petition should request **>that< the papers >be expunged< rather than >transferred<** to the correct application file. **>For Image File Wrapper (IFW) processing, see IFW Manual.<** The grant of such a petition will be governed by the factors enumerated in paragraph II of this section in regard to the unintentional submission of information. Where the Office can determine the correct application file that the papers were actually intended for, based on identifying information in the heading of the papers (e.g.,

application number, filing date, title of invention and inventor(s) name(s)), the Office will transfer the papers to the correct application file for which they were intended without the need of a petition. [emphasis added]

A review of the amendment, petition for extension of time, and certificate of mailing reveals that the heading of each document lists the attorney docket number, examiner, art unit, title and filing date for the subject application, but listed the incorrect serial number. Thus, in accordance with MPEP §724.05, it is determined that the submission was actually intended for the subject application, not the '566 application.

Accordingly, the petition to transfer papers is hereby **GRANTED**. The fees for the extension of time will also be transferred.

The date-stamped post card receipt submitted with the original petition on July 14, 2004 states that the amendment of 21 pages was accompanied by a transmittal letter, extension of time, and a certificate of first class mail. The date-stamped on the post card of January 7, 2004, is after the due date for the response.

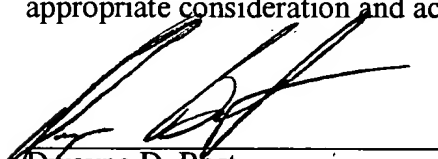
However, under 37 C.F.R. § 1.8(a)(1) correspondence is considered timely if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.

- (1) Correspondence will be considered as being timely filed if:
  - (i) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:
    - (A) Addressed as set out in § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail; or
    - (B) Transmitted by facsimile to the Patent and Trademark Office in accordance with § 1.6(d); and
  - (ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated. [emphasis added]

The date stamp post card receipt identifies the certificate of mailing and the 21 page amendment. The certificate of mailing also identifies the 21 page amendment and certifies that the amendment was deposited in the U.S. Postal Service on January 5, 2004. The certificate of mailing is in compliance with the requirements of 37 C.F.R. § 1.8(a)(1) as set forth above.

Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment is withdrawn. The petition to withdraw the holding of abandonment is **GRANTED**.

The subject application and the '566 application file record will be forwarded to the Technology Center's technical support staff for transferring the papers indicated above, including the extension of time fees. Thereafter, the application file will be forwarded to the examiner for appropriate consideration and action in due course.



Dwayne D. Bost  
Special Program Examiner  
Technology Center 2600  
Communications